IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice

and

The Honourable Mr.Justice F.M.IBRAHIM KALIFULLA

Writ Appeal No. 1020 of 2000

1. The Members
   The Appropriate Authority,
   Income Tax Department,
   Chennai - 600 034.

2. The Union of India
   rep. by the Secretary to Government,
   Ministry of Finance,
   Central Secretariat,
   North Block,
   New Delhi.

3. The Chief Commissioner of Income-Tax
   Tamil Nadu - I,
   Madras - 34. ... Appellants (Respondents)

vs.

H. Prakashchand Chordia
Hire Bagh,22/2 Pycrofts Garden Road,
Chennai - 600 006. ... Respondent(Petitioner)

Appeal filed under Clause 15 of the Letters Patent against the order dated 27.03.2000 in W.P.No. 17590 of 1997 presented under Article 226 of the constitution of India to issue a writ of Mandamus, directing the respondents to pay the petitioner the balance of consideration of Rs.9,01,500/- together with interest as aforesaid.

For Appellants :: Mrs. Pushya Sitaraman
Sr.Standing Counsel for
Income Tax Department

For Respondent :: Mr.V.Ramachandran
Senior Counsel,
for Mrs.Anita Sumanth

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J U D G M E N T

(The Judgment of the Court was delivered by
The Hon'ble The Chief Justice)

This writ appeal has been filed by the Income-tax Department against the judgment of the learned single Judge dated 27.03.2000.

2. Heard the learned counsel for the parties, and perused the record.

3. The writ petitioner was an owner of certain immovable property at Chennai, and he had entered into an agreement with Banque Nationale de Paris on 4.6.1997 for the sale of the property for a total consideration of Rs.3,23,27,500/-.

4. The first respondent in exercise of the powers vested in it under Section 269 UD of the Income Tax Act (in short 'the Act') ordered purchase of the said property by order dated 13.10.1997 by the Central Government.

5. The consideration was paid to the writ petitioner on 06.11.1997, and the writ petitioner did not object to the purchase of the property by the Government. The only grievance of the writ petitioner is regarding the discount made amounting to Rs.9,01,500/- in the order dated 13.10.1997.

6. Before dealing with the submission of the learned counsel for the parties, we may refer to the definition of 'apparent consideration' in Section 269 UA (b), which states: -

> " Apparent consideration: -
>
> (1) in relation to any immovable property in respect of which an agreement for transfer is made, being immovable property of the nature referred to in sub-clause (i) of clause (d) means, --
>
> (i) if the immovable property is to be transferred by way of sale, the consideration for such transfer as specified in the agreement for transfer
>
> (ii) ……
>
> (iii)……
>
> and where the whole or any part of the consideration for such transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be discounted value of such consideration, as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf."

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7. The short controversy in the present case is as regards the period of the discount for the purpose of deducting the interest from the value of the property shown in the sale agreement.

8. The learned single Judge in his impugned judgment has held that the members of the Appropriate Authority of the Income-tax Department were not correct in determining the discounted value payable to the writ petitioner commencing from the date of the agreement. In our opinion, the view taken by the learned single Judge is not correct in view of the decision of the Supreme Court in Ramesh Bhai J. Patel v. Union of India, (247 ITR 182), in which the Supreme Court observed: -

> " The period of such discount shall be the period between the date of the agreement and the date or dates on which consideration or part thereof is payable."

9. Thus, there are only two relevant dates to be taken into consideration for determining the period of discount, namely, (i) the date of the agreement to sell, and (ii) the date when the amount is payable.

10. In our opinion, if we introduce a third date then it will not be possible to calculate the period for which the discount will be considered, apart from violating the principle laid down by the Supreme Court in the aforesaid decision. Hence we cannot agree with the submission of the learned senior counsel for the assessee/respondent that the relevant date will be the date on which 'No Objection Certificate' was granted to the assessee. In our opinion, No Objection Certificate has no relevance either with the date of the agreement or the date when the amount is due and payable. Hence the view taken by the learned single Judge is clearly incorrect.

11. Rule 48 - I of the Income Tax Rules, 1962 prescribes the rate of interest at 8% which is to be discounted for the period between the date of the agreement and the date when the amount is payable. In our opinion, the view taken by the Gujarat High Court in Pradip Ramanlal Sheth v. Union of India, (1993) 204 ITR 866); Manik Chand Sethia v. Union of India, (1997) 226 ITR 411 (All); and M.P.Poddar v.Appropriate Authority, (1999) 240 ITR 372 is correct as it is in agreement with the view taken by the Supreme Court. The view of the Bombay High Court in Shrichand Raheja v. S.C.Prasad, (1995) 213 ITR 33 is not in accordance with the view of the Supreme Court and is, hence, incorrect.

12. We, further, agree with the view of the Karnataka High Court in C.Venkata Rao v. Union of India, (1999) 236 ITR 895 that the principle of discounting is based on logic and reasons, and the deeming fiction for determining the value of the consideration at discounted value is not arbitrary or unreasonable.

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13. In view of the above, this writ appeal is allowed. The impugned judgment of the learned single Judge is set aside. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

pv/

Copy to:

1. The Members
The Appropriate Authority,
Income Tax Department,
Chennai - 600 034.

2. The Secretary to Government of India
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New Delhi.

3. The Chief Commissioner of Income-Tax
Tamil Nadu - I,
Madras - 34.

+1cc to Ms. Pushya Sitaraman, Advocate SR 32654
+1cc to Mr.Anitha Sumanth, Advocate Sr 32623

PS (CO)
km/23.8.

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